



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/373,576	08/13/1999	J.KEITH KELLY	8344-001-27	2727

30827 7590 10/07/2003

MCKENNA LONG & ALDRIDGE LLP
1900 K STREET, NW
WASHINGTON, DC 20006

EXAMINER

GARG, YOGESH C

ART UNIT PAPER NUMBER

3625

DATE MAILED: 10/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/373,576

Applicant(s)

KELLY ET AL.

Examiner

Yogesh C Garg

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 18-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 18-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The response, paper number 17, received on 07/21/2003 is acknowledged and entered. There are no amendments. Currently claims 1-16, and 18-30 are pending for examination.

Response to Arguments

2. Applicant's arguments filed on 07/21/2003 concerning claims 1-16 and 18-30 have been fully considered but they are not persuasive.

About claims 1, 13, and 26 the applicant remarks that none of the cited references teach the recitations of these claims and gives the following reasons by attacking the references individually:

"Accordingly, Applicants respectfully submit Sullivan et al. fails to teach or suggest at least the aforementioned combination of elements (see response page 5),

"For similar reasons as stated above with respect to Sullivan et al.; Applicants respectfully submit that while Gerland et al. may teach the existence of gardening websites that "carry out business related to resolving gardening problems...", and absent any evidence to the contrary, Gerland et al. cannot be reasonably interpreted as teaching or suggesting any of the aforementioned combination of the elements "(see page 6).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re*

Art Unit: 3625

Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The examiner submitted (on pages 4 and 5 of the earlier office action) that Sullivan teaches a method and support system to help customers with problems, diagnosing the problems and offering a solution to an user who can interact with a computer system/server on a network. The examiner acknowledged that Sullivan does not explicitly disclose dealing with problems/information related to gardening material. However, the examiner provided the reasons (see page 5 of the earlier office action) as why for a person of an ordinary skill in the art it would have been obvious at the time of the applicant's invention to modify Sullivan to combine the features of the gardening web sites disclosed in Gerland et al., such as browsing, ordering catalogs and gardening material.

The applicant also remarks that the motivation provided for combining Sullivan/Gerland with National Gardening in the office action, quote " Doing so helps the processor to respond with relevant information related to that region only " is not objective for the proposed modification (See response page 7). The examiner does not agree. National Gardening explicitly teaches asking for the geographical location of the user because it would help the website/server to provide gardening information relevant to a location where user lives. A website operates and interacts with global users whose gardening problems/requirements are related to the local weather and living conditions and these local weather and living conditions would vary in different parts of the country/world. For example, in December, it will be a cold winter climate in Boston but down south in Orlando the temperatures may still be warm and as such, the gardening problems/requirements in Boston would be different from Florida. In addition, there are different state controls and regulations for the use of pesticides/fertilizers. One state may allow the use of a fertilizer/pesticide but the other state may not do so. Therefore, it would be obvious for the server/web site in Sullivan/Gerland to know the geographical location of the user as disclosed in National Gardening.

Art Unit: 3625

The applicant further remarks, "both Gerland et. al. and National Gardening are completely silent as to any teaching that at least one gardening material is identified based upon the inquiry "(see pages 7 and 8). In response to applicant's arguments, the examiner observes that the applicant's remarks attack the references individually. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The examiner submitted (on pages 4 and 5 of the earlier office action) that Sullivan teaches a method and support system to help customers with problems, receiving their queries, diagnosing the problems and offering a solution to a user who can interact with a computer system/server on a network. The examiner acknowledged that Sullivan does not explicitly disclose that the inquiries received are related to gardening material and further provided the reasons (see page 5 of the earlier office action) as why for a person of an ordinary skill in the art, it would have been obvious to modify Sullivan to combine the concept of gardening web sites, explicitly disclosed in Gerland et al. Sullivan combined with Gerland et al. discloses identifying at least one gardening material based upon the inquiry.

In view of above, the rejections of claims 1-16 and 18-30 are maintained. This is a final office action.

Overview

3. The inventions described in the claims 1-13, and 15-30 relate to a computerized method and system to help a user for his gardening problems by querying him for his problems, the geographical location of the problems, and after getting these answers, searching a database to respond to the user, offering the user to buy gardening material, displaying a list of dealers selling gardening material, displaying labels of the material being purchased, wherein the labels

Art Unit: 3625

display safety data, sales related information. Claim 14 also includes the use of Internet browser and Internet. As best understood by the examiner, the invention is a user support system to help him with his gardening problems, diagnose the problems, offer solutions, and also enabling the user to make purchases. The user and the computer system/server interact with each other on a network via input/output devices. The computer system/server further includes a database or is connected to a database to furnish the desired information to the user. Such systems and methods are old and well known to person of an ordinary skill in the art at the time of the invention (see Article by Gerland Jim, and Winer, Mark, " Taking a Spade to the Web, Buffalo News; Buffalo, N.Y.; Apr 7, 1998, pages 2, extracted on Internet on 01/15/2002 from Proquest database). Gerland et al. discloses explicitly that gardening websites existed at the time of the invention and were engaged in online ordering gardening related material, solving gardening problems. Gerland did not disclose that the system comprises components such as, storage device, database, input/output devices, processor and method steps such as, sending queries and receiving messages from each other, displaying textual information related to gardening material. However, these system components and method steps are obvious to exist in the said gardening web sites to make them functional as further demonstrated in US Patent 6,477,531 to Sullivan et al., and US Patent 6,304,850 to Keller et al. which disclose the same system components and method steps in identifying products and resolving problems related to computers and travel related items. Information related to computers or travel-related items or gardening material is non-functional and the same method steps and system components are capable of implementing all three different tasks, irrespective whether they are related to computers, travel-related items or gardening material.

Art Unit: 3625

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-2, 4, 8-11, 13-15, 21-24, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan et al. (US Patent 6,477,531), hereinafter, referred to as Sullivan, in view of Gerland Jim, and Winer, Mark, " Taking a Spade to the Web, Buffalo News; Buffalo, N.Y.; Apr 7, 1998, pages 1-2, extracted on Internet on 01/15/2002 from Proquest database: <http://proquest.umi.com>, hereinafter referred to as Gerland, and further in view of Web pages, as existed in January 1999, from <http://web.archive.org/web/19990128180853/> <http://www2.garden.org> , pages 1-2, extracted on Internet on 01/16/2002 from Proquest database: <http://proquest.umi.com>, hereinafter, referred to as National Gardening.

With regards to claims 1-2, 4, 8-11, 13-15, 21-24, and 26, Sullivan teaches a method and a support system to help customers with problems, diagnosing the problems and then offering a solution. See at least FIGS. 1-12, col.2, line 44-col.3, line 60, col.4, line 55-col.8, line 47, and col.11, lines 22-58, which teach that the user interacts with a computer system/server on a network via input/output devices, sending and receiving messages in response to each other, presenting the user with at least one query directed towards the symptoms of a problem observed by the user and identifying a solution based at least partially upon the user's responses to the inquiry, and the system includes a storage device for storing a database of relevant information, a user input/output device, a processor connected to the storage device and the user input/output device, the processor being configured to perform the

Art Unit: 3625

steps of presenting the user queries/identifying information in the database based upon the said enquiry, Internet browser, and Internet. Sullivan does not teach that the problems/information required are related to gardening material. However, in the same field of electronic commerce, Gerland teaches that gardening websites exist which carry out business related to resolving gardening problems like dealing with pests, growing vegetables,, placing online orders for gardening material such as seeds, etc.. As per dictionary, pests include diseases or agents which destroy crops. It would have been obvious to a person of an ordinary skill in the art at the time of the invention to modify Sullivan to include the features of gardening sites such as resolving gardening problems, placing online orders for gardening material. Doing so would enable customers to use Sullivan's method and system to resolve gardening problems, place online orders for gardening material, as explicitly disclosed in Gerland.

Sullivan/Gerland does not disclose that the processor queries the user about a geographic region and the user furnishes the same information to the processor. However, in the same field of endeavor, National Gardening teaches that the user informs the processor a geographic location when queried by the processor for the same (see page 1, " Selecting a region") and processor provides gardening information as relevant to that geographic location. In view of National Gardening, it would have been obvious to a person of an ordinary skill in the art at the time of the invention to modify Sullivan/Gerland to include the feature of user informing a geographical region upon being prompted by the processor. Doing so helps the processor to respond with relevant information related tot hat region only. A website operates and interacts with global users whose gardening problems/requirements are related to the local weather and living conditions and these local weather and living conditions would vary in different parts of the country/world. For example in the month of December it will be a cold winter climate in Boston but down south in Orlando the temperatures may still be warm and as such the gardening

Art Unit: 3625

problems/requirements in Boston would be different from Florida. Also there are different state controls and regulations for the use of pesticides/fertilizers. One state may allow the use of a fertilizer/pesticide but the other state may not do so.

Sullivan/Gerland/National Gardening further teaches identifying at least one gardening material based upon the inquiry, and offering the user the opportunity to purchase at least one gardening material relevant to the geographic location (see at least Gerland and National Gardening).

6. Claims 3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan/ Gerland/National Gardening.

With regards to 3 method claim and 16 system claim, Sullivan/ Gerland/National Gardening teaches a method and system for identifying a gardening material as disclosed above in method claims 1 and system claim 13 respectively. Sullivan/ Gerland/National Gardening does not disclose displaying a label associated with the gardening material to the user. Official Notice is taken of both the notoriously well-known concept and benefits of displaying a label associated with the gardening material to the user in Sullivan/ Gerland/National Gardening. It would have been obvious to a person of an ordinary skill in the art at the time of the invention to include the concept of displaying a label associated with the gardening materials such as plants, seeds, fertilizers, insecticides to the user in Sullivan/ Gerland/National Gardening because it is universally known that gardening material contains hazardous materials in the form of chemicals and it is mandatory as per state laws to display directions for use, caution users against incorrect use of the contents, display safety measures on the exterior of the packages to eliminate the risk of any accident that can take place.

Art Unit: 3625

7. Claims 5-7, 18-20, and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan/ Gerland/National Gardening in view of Sturgeon et al. (US Patent number 5,726,884), hereinafter, referred to as Sturgeon.

With regards to 4-7, 17-20, and 28-30, claims, Sullivan/ Gerland/National Gardening teaches a method and system for identifying a gardening material as disclosed above in method claims 3 and 26 and system claim 16. In Sullivan/ Gerland/National Gardening, National Gardening site further discloses that the inquiry is directed towards the user's region in the country (See page 1, "...Gardening Information For Your Region.....Select a region...."). Further, while analyzing the limitations of claims 3 and 16 above it was analyzed that label displays information about ingredients of the material, warnings, safety data etc. related to gardening material. Sullivan/ Gerland/National Gardening not disclose that at least one enquiry is directed towards the user's state, and label varies depending upon the user's state. However, Sturgeon teaches that label varies depending upon the user's state and enquiry is directed towards the user state (col.1, line 5-col.2, line 49, specially lines 7-12, ".... *This invention relates to....regulatory, review of.....use, handle, and/or transport of chemical products.....considered hazardous to humans.....*", and col.2, lines 1-6, "*..These laws often have overlapping jurisdiction and are not always consistent with one another.....Several states.....have passed their own hazardous substance laws.....These laws still apply in those states and in many cases supersede their Federal counterparts..*"). Note: Sturgeon teaches that state laws differ for hazardous materials and therefore it will be mandatory to know the state to follow the laws of that state while using, handling or transporting hazardous materials like gardening materials, which include pesticides and fertilizers).

It would have been obvious to a person of an ordinary skill in the art at the time of the invention to modify Sullivan/ Gerland/National Gardening and include the feature that at least

Art Unit: 3625

one enquiry is directed towards the user's state, and label to vary depending upon the user's state because states have different laws with regards to use, handling and transport of hazardous materials (as suggested in Sturgeon, col.2, lines 1-6) and knowing the state would enable the suppliers to supply hazardous materials like gardening materials including pesticides and fertilizers with labels displaying safety, caution and warning data in conformity with the laws of the state where the material is to be used.

8 Claims 12 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan/ Gerland/National Gardening.

With regards to claims 12 and 25, Sullivan/ Gerland/National Gardening teaches a method and a system for identifying gardening material as disclosed and analyzed in claims 1 and 13 respectively, above. Sullivan/ Gerland/National Gardening does not disclose displaying a list of retailers from which the gardening material is available. Official Notice is taken of both the old and well-known concept and benefits of displaying a list of retailers where the gardening material is available to the user. Referring a list of dealers to the buyers is old and well-known practice in the field of manufacturing, buying, and selling, e.g. selling gardening products through Home Depot or Loews, selling cars, electrical appliances, etc. Manufacturers do not want to sell directly to consumers, to save operating costs, but sell their items through dealers. Retailers store and sell material from several manufacturers. Therefore, it would be obvious to a person of an ordinary skill in the art at the time of the invention to display a list of retailers to the buyers so that they can buy gardening products from retailers like Home Depot, Loews or others, allowing them to browse and purchase material from several manufacturers from one place.

Art Unit: 3625

9. Claims 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan/ Gerland/National Gardening/Official Notice.

With regards to claim 27, Sullivan/ Gerland/National Gardening/Official Notice teaches all the limitations of the claim, as analyzed for claims 1-16, 18-25 above, except for adding product to purchase list, and check out process. However, these limitations are old and well known in purchasing on-line or otherwise.

When a person purchases items whether on-line or otherwise he has to add them to the purchase list and undergo through a checkout process to pay for them and own them. Therefore, It would be obvious in Sullivan/ Gerland/National Gardening/Official Notice to add product to purchase list when purchasing more than one item on-line or otherwise and then to go through a checkout process to make payment and own the items.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3625

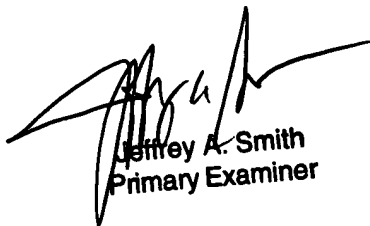
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yogesh C Garg whose telephone number is 703-306-0252. The examiner can normally be reached on M-F(8:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn W Coggins can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Yogesh C Garg
Examiner
Art Unit 3625

YCG
10/05/2003


Jeffrey A. Smith
Primary Examiner